

1 (The jury is present.)

2 THE COURT: All right.

3 BY MR. ROBERTSON:

4 Q Mr. Lohkamp, I just want to get back to that
5 question I was asking you about that hosting service
6 that is Lawson will provide. The hosting of that is
7 at a Lawson facility; is that correct?

8 A My understanding is it's at a third party
9 facility.

10 Q A third party facility that is being leased by
11 Lawson for hosting those servers that have the
12 operational software?

13 A We are leasing space at the third party hosting
14 site.

15 Q It's Lawson's servers that are operating the
16 hosting service?

17 A I don't know exactly how that's structured.

18 Q You have a rather large binder next to you right
19 there on the left-hand corner of the table. That's
20 Plaintiffs' Exhibit No. 118. I just want to ask you a
21 few questions about that, if we could.

22 If you will flip through quickly, you will see
23 that that binder is just one Lawson response to a
24 request for a proposal for Cherry Creek Schools; do
25 you see that?

LOHKAMP - DIRECT

1049

1 A Yes, yes.

2 Q This is a Lawson authored document?

3 A It looks like it is, yes.

4 Q And there's an executive summary at page 7 of the
5 document, Section 1.0, ends with Bates label 173.

6 Page 7 is identified in the lower left-hand corner.

7 A Yes.

8 Q One of the software solutions that Cherry Creek
9 School is seeking, you'll see in that first paragraph,
10 is to include the ability to conduct business online
11 with vendors and other partners. The school wants to
12 have procurement activities and resources available
13 there. Do you see that?

14 A Yes, I see that.

15 Q That would be part of the procurement solutions
16 we've been talking about; is that right?

17 A That's what I would interpret, yes.

18 Q If you'll turn to the page that is page 27495 and
19 ends with Bates label 193. There's a heading
20 entitled, Custom catalogs. Do you see that?

21 A Yes, I see that.

22 Q Under that heading it says, Individual department
23 and users can establish custom catalogs that reflect
24 their unique ordering patterns. Do you see that?

25 A Yes, I do.

LOHKAMP - DIRECT

1050

1 Q Next sentence that Lawson is representing to this
2 potential customer is that, Furthermore, you can
3 establish catalogs for certain days of the week by
4 item classification, vendor or other criteria. Did I
5 read that correctly?

6 A Yes, you did.

7 Q That's a representation that Lawson was making to
8 this school district?

9 A Yes.

10 Q I want you to turn to page 179 of this document,
11 and there's a heading there called "functional
12 catagory purchasing." Do you see that?

13 A I'm just flipping to it, sir.

14 Q Are you with me now?

15 A I am.

16 Q There's a legend there for certain things that are
17 provided by Lawson or are provided by third parties or
18 whether some people require some configuration, etc.
19 Do you see that?

20 A Yes.

21 Q Lawson represent there that when they use the term
22 "F," that the functionality is fully provided out of
23 the box. Do you see that?

24 A Yes.

25 Q And you'll see below there there's a table that

LOHKAMP - DIRECT

1051

1 has certain headings including a reference number and
2 functional requirements. Do you see that?

3 A Yes.

4 Q And the third column has a response.

5 A Yes.

6 Q And under that response, for example, for the
7 reference No. PO 1.00, the response would be F, right?
8 So that means that the Lawson purchasing of the
9 procurement solution they are offering here, for
10 example, would have that capability fully provided out
11 of the box. Is that how you would understand this
12 table?

13 A Yes, that's what the response means.

14 Q If you would turn to page that ends 192, which is
15 Bates label 9358. There's a question from the school
16 district at PO 161 on that page. Do you see that?

17 A Yes.

18 Q So the school district is asking Lawson for this
19 procurement solution whether it has the ability to
20 generate various catalogs, including vendor catalogs,
21 stockroom catalogs, textbook catalogs or food service
22 catalogs in print and online. Do you see that?

23 A Yes.

24 Q And lawson indicated that that capability was
25 fully provided out of the box, correct?

LOHKAMP - DIRECT

1052

1 A Yes, we answered F.

2 Q That's all I have of that document, sir.

3 I'd like you to go to Exhibit No. 215 now if I
4 could, plaintiff's exhibit.

5 A I'm sorry?

6 THE COURT: It's not in the notebook, is it?

7 MR. ROBERTSON: No, Your Honor. That was my
8 mistake, but he does have it now.

9 Q Well, do you have Plaintiff's Exhibit No. 215 now,
10 sir?

11 A Yes.

12 Q Now, again, this is a Lawson authored document,
13 correct?

14 A Yes, it looks like it.

15 Q And it looks like it's a response to Jackson
16 Health Care System; correct?

17 A Yes.

18 Q And if you'd go to the executive summary again,
19 there's a mention of Lawson's ERP systems, which
20 include this procurement software we've been talking
21 about, correct? That falls under the heading of
22 electronic -- what's called enterprise resource
23 planning solutions?

24 A Yes. ERP would include purchasing.

25 Q If you go to the page that ends with the Bates

LOHKAMP - DIRECT

1053

1 label No. 149, sir. I'm sorry. It's the page that's
2 at the left-hand corner ends with 149. It ends with
3 the Bates label 171. And again, in this table in the
4 left column is a heading called functional capability.
5 Do you see that?

6 A Yes.

7 Q Then there's another heading that, says currently
8 "available." And then there's another heading that
9 says "currently not available." And then there's a
10 heading that says "attachment." Do you see that?

11 A Yes, I do.

12 Q And if you go down to the column with the heading
13 9 G commodity management functions?

14 A Yes.

15 Q The second question there says, Does the system
16 support generic and vendor catalogs with sub
17 categories of inventory and stockless items? Do you
18 see that?

19 A Yes, I do.

20 Q What did Lawson indicate about whether its system
21 had that capability?

22 A It indicated yes.

23 Q Two lines down, sir, from that you'll see a
24 heading under "commodity management functions,"
25 support X12832, electronic price catalog data from

LOHKAMP - DIRECT

1054

1 vendors to the JHS item catalogs with updates to
2 existing items only. Do you see that?

3 A Yes.

4 Q JHS is this Jackson Health System, a potential
5 customer, right?

6 A I believe that's what it stands for.

7 Q What did Lawson represent to Jackson Health System
8 with respect to whether its procurement system had
9 that capability?

10 A Yes.

11 Q The next line down says, "Ability to update our
12 catalogs with external vendor provided files." Do you
13 see that?

14 A Yes.

15 Q What did Lawson represent to the Jackson Health
16 Care system as to its procurement software capability?

17 A We indicated yes.

18 Q If you'll turn to the next page still under this
19 functional capability column, there's a subheading
20 there that says, "Expanded item searched by," do you
21 see that?

22 A Yes.

23 Q With respect to whether or not the Lawson
24 procurement solution offered to Jackson Health System
25 had the ability to do a search by vendor catalog

LOHKAMP - DIRECT

1055

1 number, what did Lawson answer?

2 A Yes.

3 Q What did Lawson answer when it was asked whether
4 it could do a search by a hospital specific code?

5 A Yes.

6 Q What did Lawson answer when it was asked whether
7 it could do a partial description of an item, for
8 example, wild card, contains, etc.?

9 A We answered yes.

10 Q What did Lawson answer when it was asked by this
11 health system whether or not it could do searches by
12 manufacturer catalog number?

13 A We answered yes.

14 Q What did Lawson answer when it was asked whether
15 it could search by classification code?

16 A We answered yes.

17 Q What did Lawson answer when it was asked whether
18 it could search by a vendor name?

19 A We answered yes.

20 Q What did Lawson answer when it was asked whether
21 it could search by a manufacturer's name?

22 A We answered yes.

23 Q The next category said whether or not it could
24 answer questions with respect to item availability.

25 Do you see that where it says, "currently available"?

LOHKAMP - DIRECT

1056

1 A What section?

2 Q Actually, that's all I have with respect to that
3 document sir.

4 A All right.

5 Q Thank you. Do you have Plaintiff's Exhibit 149 up
6 there?

7 A Here it is.

8 THE COURT: It's not in his book either.

9 MR. ROBERTSON: He has it now, Your Honor, in
10 his book.

11 Q This is another response to a request for
12 information, isn't it, by the Holland Hospital?

13 A Yes.

14 Q It's a Lawson authored document?

15 A It appears so.

16 Q And let me just go right to it. There's some
17 questions about functional requirements for
18 procurement solutions being discussed by Lawson in
19 this document. This is at the page that ends with the
20 Bates label 58. I'm sorry. It's page 58 of 91, and
21 it has the Bates label ending 796.

22 A Okay.

23 Q I apologize. I've directed you to the wrong page.
24 It's 149 and it's at page 29. So let's start over, if
25 we could. I apologize, Mr. Lohkamp.

LOHKAMP - DIRECT

1057

1 There's a heading there for material
2 requirements -- excuse me. Materials requirements.
3 Then there's a subheading "inventory control," do you
4 see that?

5 A Yes.

6 Q Could you read out loud No. 10 for the jury?

7 A "Ability to produce supply catalogs by item
8 number, manufacturer, vendor, class, inventory
9 location."

10 Q And there's a response key at the top. Do you see
11 that?

12 A Yes.

13 Q What does Lawson represent that A means?

14 A Available/install.

15 Q If you will go back to page 21 of 91, and there is
16 instructions for the application of functional
17 requirement questions there?

18 A Yes.

19 Q So you have already identified that have A means
20 available and currently installed. Underneath that
21 there's a rating column.

22 A Okay.

23 Q It says, For each requirement listed, rate the
24 application's performance on a scale from 0 to 7, with
25 0 indicating no performance to 7 indicating leading

LOHKAMP - DIRECT

1058

1 edge capabilities.

2 A Yes, I see that.

3 Q So going back to page 29 then, Lawson represented
4 to Holland Hospital that it had a leading edge
5 capability that was available and installed to produce
6 supply catalogs by item number, manufacturer, vendor
7 class and inventory location; is that right?

8 A Yeah, we rated that question a 7.

9 MR. ROBERTSON: That's all I have with
10 respect to that document.

11 Q The last exhibit with respect to these RFPs is
12 Plaintiff's Exhibit No. 226. Will you confirm for me
13 that that is a response to a request for a proposal
14 from Blount Memorial Hospital?

15 A Yes, it is.

16 Q This a document authored by Lawson, correct?

17 A It appears to be, yes.

18 Q If you'll go to the page that ends with Bates
19 number -- excuse me. The page that is labeled 58 and
20 ends with the Bates No. 416.

21 THE COURT: What is the exhibit number?

22 MR. ROBERTSON: 226, Your Honor.

23 Q Again, you'll see we have a column discussing
24 functional requirements?

25 A Yes.

LOHKAMP - DIRECT

1059

1 Q And there's a column for current release, do you
2 see that?

3 A Yes.

4 Q Future release column?

5 A Yes.

6 Q Custom column?

7 A Yes.

8 Q And not available column?

9 A Yes.

10 Q Can we assume that a Y means yes, that it's in the
11 current release?

12 A It appears that that yes would be -- it would be
13 yes.

14 Q The Y would be a yes?

15 A Yes.

16 Q Under the -- there's a Roman numeral 9, eCommerce
17 capabilities, do you see that?

18 A Yes, I do.

19 Q The fourth requirement under there is a list that
20 asks for manages price catalogs, purchase orders, PO
21 confirmations, and invoice transactions. Do you see
22 that?

23 A Yes, I do.

24 Q What does Lawson represent to Blount Memorial
25 Hospital as to the capability of its procurement

LOHKAMP - DIRECT

1060

1 system to do that?

2 A We answered yes.

3 Q If you will go to the page that ends with 22.

4 There's a heading there under "functional

5 requirements." I want you to focus on the No. 2 there

6 that says, "The following definitions and format of

7 answers should be understood and followed when

8 completing this section." You'll see for current

9 release, the answer should be Y or N. Do you see

10 that?

11 A Yes, I see that.

12 Q So that must be a product must be in production

13 environment and included in the general product

14 release; is that right?

15 A Yes.

16 Q All right. That's all I have with respect to that

17 document, sir?

18 You are familiar with the fact that after Lawson

19 is successful in winning a bid for or after a

20 potential customer receives a response for a proposal,

21 one of the next steps to prepare what is going to be

22 called a statement of work; is that right?

23 A Yes, for proposal of services.

24 Q So when you have won the contract, it's typical of

25 Lawson to prepare a statement of work; is that right?

LOHKAMP - DIRECT

1061

1 A I believe it is if we're providing services.

2 Q Okay. And you have seen a statement of work as
3 part of your responsibilities at the company, correct?

4 A I've seen a couple of them, yes.

5 Q While we're getting those, let me move onto
6 another area.

7 THE COURT: He's here.

8 Q I'm not going to ask you about all those
9 documents. Let me just ask you, if you would, to just
10 go to the first one and confirm for me that it's a
11 Lawson authored document statement of work?

12 THE COURT: What is it? What exhibit is it?

13 MR. ROBERTSON: It's --

14 Q Can you tell us the exhibit number, Mr. Lohkamp?

15 A The first one is PX 501 E1.

16 Q That's a statement of work for Lawson?

17 A It's a change order form to modify the statement
18 of work.

19 Q What's the next document?

20 A The next one is PX 501, P1, and that's a statement
21 of work for Cancer Treatment Centers of America.

22 Q Is that a Lawson authored document?

23 A Yes, it is.

24 Q What's the next one, sir?

25 A The next one is PX S 501, I, and it's a change

LOHKAMP - DIRECT

1062

1 order form that modifies a statement of work for
2 Community Medical Centers.

3 Q What's a change order form modifying statement of
4 work? Does that mean the statement of work has been
5 modified in some way?

6 A Yeah. My understanding of what a change order
7 form is someone is requesting a change to the services
8 we provide.

9 Q What is the next document in that binder?

10 A It's PX 501 L. And it's a statement of work for
11 Deaconess Health System.

12 Q Can you go to the next one?

13 A The next one is PX 501 M, and it's the master
14 terms and conditions, Lawson Software and user
15 agreement.

16 Q What's the next document?

17 A That's the last one in this binder. Should I go
18 to the next binder?

19 Q All right. Sorry, sir. What's the first document
20 in there?

21 A In this first binder?

22 Q No, in the second binder.

23 A I haven't got that. Sorry. It's PX 501 N. And
24 the first page is a sales and use tax certification of
25 exemption.

LOHKAMP - DIRECT

1063

1 Q What's the next page?

2 A The next page is a services turnover document.

3 Q Okay. Next page?

4 A It's a services order form for Holland Hospital.

5 Q What's the exhibit number for that one, sir?

6 A This one is PX 501 N.

7 Q Services order form, is that the order form for
8 the services that Lawson is going to be providing to
9 Holland Hospital?

10 A Yes, it is.

11 Q What's the next document, sir?

12 A The next document is PX 501 R, and it states,
13 "Server sizing estimate for Owensboro Medical Health
14 System."

15 Q Can you turn to the page where it indicates it's
16 going to be a contract for services provided?

17 A The next page is "What is a server sizing
18 estimate?"

19 Q What about the next page?

20 A "Parameters overview." It's still part of the
21 sizing.

22 Q Next page, sir?

23 A "Proposed architecture."

24 THE COURT: Interesting, but not useful.

25 What are we doing? These exhibits are in.

LOHKAMP - DIRECT

1064

1 MR. ROBERTSON: Well, Your Honor, I'd like to
2 offer what we had discussed before was is a Federal
3 Rule of Evidence 1006 summary of the documentation.
4 We've provided it to the defendant, and I believe with
5 one modification it was not objected to. It's
6 Plaintiff's Exhibit 516.

7 THE COURT: Any objections to Plaintiff's
8 Exhibit 516?

9 MS. STOLL-DeBELL: No, Your Honor.

10 THE COURT: What is it?

11 MR. ROBERTSON: What is it? I'm sorry, Your
12 Honor?

13 THE COURT: Summary of what?

14 MR. ROBERTSON: Of these contracts and what,
15 in fact, the software applications and modules that
16 were licensed, the involvement and the implementation
17 of those, and the various customers and information
18 detailing what the implementation was and what the
19 particular applications or modules were that were
20 licensed.

21 THE COURT: And there's no objection to PX
22 516. It's admitted.

23 (Plaintiff's Exhibit 516 is admitted into
24 evidence.)

25 THE COURT: And all of the PX 501s are

LOHKAMP - DIRECT

1065

1 admitted, aren't they?

2 All right. Let's go.

3 BY MR. ROBERTSON:

4 Q I'd like to talk to you, sir, a little bit about
5 some industry analyst reports and publications that
6 you review as part of your job as product strategist.

7 All right?

8 So in your role as a product strategist, you have
9 had occasion to review industry analyst reports; is
10 that right?

11 A That is correct.

12 Q Among the industry analyst reports you review on
13 occasion is Gartner, correct?

14 A Correct.

15 Q And you also review industry analyst reports from
16 Aberdeen; is that right?

17 A Yes, I do.

18 Q These are industry analyst reports that often
19 refer to products that were within your
20 responsibilities at the company including procurement,
21 right?

22 A Yes.

23 Q And you have also reviewed industry analyst
24 reports from Forester; is that right?

25 A Yes, I have.

LOHKAMP - DIRECT

1066

1 Q Particularly, in the procurement area; is that
2 correct?

3 A Yes, I have.

4 Q And for procurement industry, you have also looked
5 at analyst reports from AMR; is that right?

6 A Yes.

7 Q And you have also looked at analyst reports from
8 an outfit known as VDC; is that right?

9 A That's correct.

10 Q And Lawson reviews and sometimes relies on the
11 information provided in those industry analyst reports
12 for making its own internal decision; isn't that
13 right?

14 A Yes, we sometimes lavish those into our planning.

15 Q Isn't it true that you provide information
16 concerning Lawson's products including procurement
17 products in the supply chain management industry to
18 those analyst reports?

19 A Yes, I do.

20 Q And part of your duties as a product strategist
21 for Lawson is to speak with these industry analysts
22 about the procurement solutions like S3 offered by
23 Lawson; isn't that right?

24 A Yes, it is.

25 Q And among the industry analysts that you speak

LOHKAMP - DIRECT

1067

1 with in your role as a product strategist is Garter,
2 correct?

3 A Yes.

4 Q And Forester?

5 A Yes.

6 Q Aberdeen?

7 A Yes, Aberdeen.

8 Q VDC?

9 A Yes.

10 Q AMR?

11 A Yes.

12 Q And you use these industry analyst reports to
13 provide Lawson with intelligence with respect to
14 market trends; isn't that right?

15 A Some of the reports I do use for that.

16 Q What are the ones you find most reliable, sir?

17 A Gartner is one of the more reliable ones.

18 Q And you have a personal subscription to one of
19 more of these publications; isn't that right?

20 A I have a personal subscription to AMR, but then it
21 converted into Gartner when they were purchased.

22 Q But the ones you use most are Gartner and
23 Forester; isn't that right?

24 A Gartner, Forester and AMR.

25 Q Now, outside of these industry analyst reports,

LOHKAMP - DIRECT

1068

1 you also keep abreast of trends and developments in
2 the supply chain management industry, right?

3 A I try to.

4 Q So if there are any mainstream periodicals or news
5 services that are discussing the procurement sphere,
6 for example, you try to pay attention to those as part
7 of your job responsibilities?

8 A I certainly pay attention to certain publications.

9 Q What would those be outside of the analyst reports
10 we've talked about?

11 A I follow Health Care Purchasing News, Materials
12 Management and Health Care. I also get emails from IT
13 Toolbox. I also get emails from Supply Chain
14 Management Review. So those are some of the key
15 publications I look at.

16 Q How about just general news publications,
17 newspapers, that kind of thing? If they have articles
18 of interest involving electronic procurement, do you
19 keep abreast press of them?

20 A If I see the articles, I would read them.

21 Q Let's talk a little bit now about your knowledge
22 of ePlus, if we can.

23 A Okay.

24 Q Isn't it true that you knew of ePlus prior to the
25 filing of this lawsuit?

LOHKAMP - DIRECT

1069

1 A Yes, I did.

2 Q And you initially became aware of ePlus at a
3 health association conference in 2003; isn't that
4 right?

5 A Yes.

6 Q Is that one of those conferences you were talking
7 about before where various companies go and have
8 booths in order to display the software solutions that
9 they have?

10 A That was an industry conference where they did
11 have booths set up for vendors.

12 Q You saw that ePlus had a booth set up there; is
13 that right?

14 A Yes, I did.

15 Q And you visited that booth; isn't that right, sir?

16 A I did stop by that booth.

17 Q And you recall that ePlus was exhibiting product
18 offerings in procurement relating to catalogs; isn't
19 that right.

20 A Yes, I recall they had software related to
21 catalogs.

22 Q And it's also true that you're aware of ePlus
23 prior to the filing of this law suit by their listing
24 in the Forester e-Procurement Wave; isn't that right?

25 A I didn't recall seeing that, and I went back and

LOHKAMP - DIRECT

1070

1 looked at that wave after the lawsuit had been filed.

2 THE COURT: The question is were you aware of
3 it from Forester's listing?

4 THE WITNESS: I did not recall seeing them in
5 the Forester listing. I went back and checked after
6 this to see if they were on that list.

7 THE COURT: Were they?

8 THE WITNESS: They were.

9 THE COURT: Did looking at that refresh your
10 knowledge about whether or not you knew about them
11 before the filing of the lawsuit?

12 THE WITNESS: I had the prior knowledge from
13 2003 when I ran across them, but I hadn't run across
14 them prior to the law suit except for where they came
15 up at a Cleveland Clinic where Cleveland Clinic was
16 looking between ePlus and Sciquest.

17 THE COURT: When was that?

18 THE WITNESS: I believe that was in
19 approximately 2008.

20 Q You're aware that the lawsuit was filed in May of
21 2009?

22 A Yes.

23 Q Isn't it true that prior to this lawsuit you had
24 also spoken to sales people at Lawson who had competed
25 with ePlus for business?

LOHKAMP - DIRECT

1071

1 A The situation with Cleveland Clinic where they
2 were bidding for a portion of the business there.

3 Q How did you come to learn that ePlus was competing
4 for that customer?

5 A The solution consultant contacted me and said that
6 Cleveland Clinic, who was already a Lawson customer at
7 the time, was trying to decide between Sciquest and
8 ePlus for a catalog solution. They were expecting to
9 use Lawson's Punchouts to connect to whichever they
10 chose. So he was asking me about our Punchout
11 capability.

12 Q When you say "solution consultant," you're talking
13 about a Lawson salesperson, right?

14 A The Lawson salesperson who does the demos.

15 Q And that individual's name was Brett Weiss?

16 A That's correct.

17 THE COURT: You mentioned the name of some
18 other company; Science Quest or something.

19 THE WITNESS: Sciquest.

20 THE COURT: But his question was how did you
21 know about ePlus.

22 THE WITNESS: I knew about it from the
23 Cleveland Clinic. So, specifically, he was asking me
24 about the Cleveland Clinic opportunity. So the
25 solution consultant from Lawson called me and

LOHKAMP - DIRECT

1072

1 explained that Cleveland Clinic was trying to
2 decide -- they were looking at Lawson's Punchout and
3 they were trying to decide between ePlus and Sciquest
4 in terms of catalog and content solution.

5 Q And Lawson was going to partner with Sciquest if
6 they got the bid for the Cleveland Clinic; isn't that
7 right?

8 A Yes.

9 Q And you mentioned that Forester e-Procurement Wave
10 that you reviewed in reference to ePlus, that was
11 published in 2007; is that right?

12 A I don't recall exactly when.

13 Q What is that actually?

14 A The Forester e-Procurement Wave is a report where
15 Forester goes out and interviews different software
16 companies, asks them about their capabilities, and
17 then scores and rates them and summarizes it.

18 Q Are you aware of other competition between ePlus
19 and Lawson?

20 A The only other one that I'm aware of is that of
21 Novant where ePlus was also vying for a portion of the
22 business.

23 MS. STOLL-DeBELL: Objection, Your Honor.
24 There's no foundation that there was any competition
25 between Lawson and ePlus at the Cleveland Clinic.

LOHKAMP - DIRECT

1073

1 THE COURT: He just said there was. This
2 witness has provided that foundation.

3 MS. STOLL-DeBELL: I don't think so, Your
4 Honor.

5 THE COURT: Well, I'll let the jury decide
6 that. I heard what I heard. Overruled.

7 You're talking about something else now.
8 You're talking about ePlus in competition with
9 somebody else. Who was that?

10 MR. ROBERTSON: Your Honor, I'm asking --

11 Q You mentioned Novant. You're aware that ePlus was
12 in competition with Lawson for Novant; is that right?

13 A Well, I --

14 Q Can you answer that question fairly yes or no,
15 sir?

16 A I didn't think they were competing directly for
17 the business.

18 Q So you thought they were competing indirectly?

19 A I thought they were competing for a different
20 portion like the content side of it.

21 Q Let me ask you this, sir.

22 THE COURT: What is Novant?

23 MR. ROBERTSON: It's a medical center.

24 THE COURT: I'm asking the witness.

25 THE WITNESS: It's a health care center.

LOHKAMP - DIRECT

1074

1 THE COURT: It's different from the Cleveland
2 Clinic?

3 THE WITNESS: Yes, it is.

4 THE COURT: You were aware that ePlus was
5 bidding for some component of Novant's business?

6 THE WITNESS: I was aware of it after the
7 fact when it was pointed out that they had been there.

8 Q This RFP process, that's often done in secret.
9 And by that I mean been the person, the potential
10 customer, doesn't always inform the bidder who all the
11 other competition is; isn't that fair to say?

12 A That's correct.

13 Q And that's typical, isn't it?

14 A It's typical for a lot of situations.

15 Q Sometimes your sales people get intelligence that
16 there may be somebody else in competition, but other
17 times they are completely in the dark as to who the
18 competition might be; fair to say?

19 A That does happen, yes.

20 Q So when that happens Lawson, might not even know
21 it's competing with ePlus on a particular request for
22 a proposal; is that right?

23 A It's possible that we wouldn't know if ePlus was
24 bidding for a business.

25 Q But even if you didn't know and it's a fact then,

LOHKAMP - DIRECT

1075

1 that competition is occurring, right? It doesn't turn
2 on whether you know or not know, right?

3 A No, it doesn't.

4 MR. ROBERTSON: Thank you. I have no further
5 questions.

6

7 CROSS-EXAMINATION

8 BY MS. STOLL-DeBELL:

9 Q Good morning, Mr. Lohkamp.

10 A Good moaning.

11 Q Let's start off first by talking about these
12 competition issues that you just talked about with
13 Mr. Robertson.

14 Can you explain to me who ePlus was competing with
15 for the Cleveland Clinic deal?

16 A My understanding is they were competing against
17 Sciquest.

18 Q Why is it your understanding that they were
19 competing against Sciquest?

20 A Because when I spoke with the solution consultant,
21 Brett Weiss, he mentioned that Cleveland Clinic was
22 trying to decide between two solutions for catalog and
23 content, and they were trying to decide between
24 Sciquest and ePlus. They were looking to use Lawson
25 Software and Lawson procurement regardless to connect

LOHKAMP - CROSS

1076

1 to whichever solution they were going to choose.

2 Q So Lawson, had they selected ePlus, Lawson would
3 have been in a position that it was working with
4 ePlus?

5 MR. ROBERTSON: Objection, leading.

6 THE COURT: Overruled.

7 A So if they had selected ePlus, we would have --
8 Cleveland Clinic would have been using Lawson, and we
9 would have been open to working with ePlus.

10 Q And that was to use Lawson's Punchout product to
11 connect to some catalog product provided by ePlus?

12 A That's what I would have expected was using
13 Punchouts to connect to ePlus.

14 Q The same is true for Sciquest? It would be
15 Lawson's Punchout product to connect to some catalogs
16 provided by Sciquest?

17 A Yes, Punchout is used to connect to Sciquest.

18 Q So the customer wasn't actually making a decision
19 between whether to purchase something from Lawson
20 versus ePlus?

21 A That's my understanding.

22 Q Is that the same situation for Novant as well?

23 A That would be my understanding.

24 Q And the Novant situation, did you learn about that
25 as part of this lawsuit?

LOHKAMP - CROSS

1077

1 A Yes, I did.

2 Q So not as part of your daily job duties as a
3 product strategist?

4 A Not as part of my daily duties.

5 Q Other than the Cleveland Clinic situation that you
6 just described for us, are you aware of any other
7 situation where ePlus has been bidding for the same
8 customer against Lawson?

9 A Not in the course of my day-to-day activities.
10 Only the situations mentioned as part of this lawsuit.

11 Q Who are Lawson's main competitors for supply chain
12 management products?

13 MR. ROBERTSON: Objection, Your Honor.
14 Outside the scope.

15 MS. STOLL-DeBELL: I think he talked about
16 competition and competition with ePlus, so I think it
17 is within the scope.

18 MR. ROBERTSON: I didn't ask anything about
19 any other outside competitors.

20 MS. STOLL-DeBELL: I still think it's within
21 the scope of who is Lawson's competition.

22 MR. ROBERTSON: It is, but that wasn't within
23 the scope of my questions and my examination.

24 MS. STOLL-DeBELL: I think his questions
25 related to competition, and I'm following up on that.

LOHKAMP - CROSS

1078

1 THE COURT: Well, they did relate to
2 competition, but the fact that they are related
3 doesn't make it relevant to the direct examination.
4 You can ask about that in your own case. Sustained.

5 MS. STOLL-DeBELL: Okay. Thank you, Your
6 Honor.

7 BY MS. STOLL-DeBELL:

8 Q How do you keep track of Lawson's competitors?

9 A We review the websites. We review analyst
10 reports. And usually depending on the situation, I
11 may maintain a competitive folder about that
12 particular competitor. And if I'm helping to launch a
13 new product, I might create a summary of the different
14 competitors to help with salespeople understand who
15 they are and how to position against them.

16 Q So you keep some folders for Lawson's competitors?

17 A Yes, I do.

18 Q Do you have a folder for ePlus?

19 A No.

20 Q Does Lawson have a database that it uses to keep
21 track of its competitors?

22 A Yes, it does.

23 Q Do you have access to this database?

24 A Yes, I do.

25 Q Did you check it to see if it had any information

LOHKAMP - CROSS

1079

1 in it about ePlus?

2 A Yes, I did.

3 Q Did it?

4 A Not that I could find.

5 Q I'm going to move onto another topic.

6 Mr. Robertson asked you about your knowledge of ePlus
7 when you first learned about them. When did you first
8 learn about ePlus' patents?

9 A When this lawsuit was filed.

10 Q So as part of your earlier knowledge, you did not
11 know that they owned patents?

12 A That's correct.

13 Q I'm going to ask you some questions about some of
14 the accused products in this case, the core modules
15 and also RSS. Let's start by talking about RSS. When
16 you select search catalog in RSS, what does it
17 actually search?

18 A It's searching the Lawson item master.

19 Q Who selects the items that are included within
20 Lawson's item master?

21 MR. ROBERTSON: Objection, Your Honor
22 relevancy.

23 MS. STOLL-DeBELL: Your Honor, it goes to
24 infringement.

25 MR. ROBERTSON: It has nothing to do with the

LOHKAMP - CROSS

1080

1 Court's claim constructions, Your Honor.

2 MS. STOLL-DeBELL: We disagree, Your Honor.
3 I think it's very relevant to whether it meets the
4 Court's definition of "catalog." Who assembles it,
5 and as assembled, whether it meets the specific
6 requirements of the Court's definition.

7 MR. ROBERTSON: There's nothing within the
8 Court's definition that talks at all about needs to
9 select the item data. All it needs to be is an
10 organized collection of items and associated
11 information as set forth. Further with the
12 requirement that it constitutes that organized
13 collection.

14 Your claim construction is completely silent
15 as to who selects it. So it's irrelevant to these
16 proceedings.

17 MS. STOLL-DeBELL: Your Honor, it's an
18 organized collection of items.

19 THE COURT: What relevance does who selects
20 the items have to the case? I think that's the
21 objection.

22 MR. ROBERTSON: Yes, sir.

23 THE COURT: I don't know what relevance it
24 has, and so I want you to tell me. If you feel like
25 it has relevance, I'll overrule the objection.

LOHKAMP - CROSS

1081

1 MS. STOLL-DeBELL: I do think it's relevant,
2 Your Honor. Part of the Court's claim construction
3 requires that the organized collection of items be
4 published by a vendor. We heard testimony from Dr.
5 Weaver talking about how he interprets that and
6 applies it to mean originated by a vendor.

7 THE COURT: Your point goes to whether it's
8 published by a vendor or not?

9 MS. STOLL-DeBELL: Yes, Your Honor.

10 MR. ROBERTSON: Well, Your Honor has
11 indicated that doesn't mean who selects it. It just
12 means that it has to be either in written form, which
13 can be electronic, or verbally provided. Nothing
14 about who selects it. Certainly, the source of the
15 information, such as pricing, item description, etc.,
16 is not under dispute. That's not in dispute. That is
17 always provided by the vendor.

18 So the selection process has nothing to do
19 with any kind of published by the vendor process.

20 MS. STOLL-DeBELL: Your Honor, Dr. Weaver
21 talked on and on about where things originated,
22 whether they originated from a vendor or from a
23 customer who had a legacy system other than Lawson,
24 and we listened to all kinds of evidence about where
25 things originate, where they come from.

LOHKAMP - CROSS

1082

1 And this questioning goes to directly to
2 that. Where did this information originate? The
3 organized collection. Who created that?

4 MR. ROBERTSON: There's no "who created it"
5 in your construction, Your Honor.

6 THE COURT: I don't understand where the
7 "who" is unless you're trying to establish that
8 "published by a vendor" means selecting something to
9 put in the item master. Is that what you're trying to
10 show?

11 MS. STOLL-DeBELL: I'm trying to show that
12 Lawson's item master is not published by a vendor.
13 The organized collection of items is something that is
14 created by Lawson's customer, not by a vendor. So
15 it's selected, it's organized, all of that stuff is
16 done by the customer not a vendor.

17 And, therefore, and for other reasons as
18 well, it's not published by a vendor. It's
19 something --

20 THE COURT: You're offering this evidence to
21 support your view that placement of items in the item
22 master is not a catalog; is that right? Because the
23 items in the catalog are not published by a vendor; is
24 that right?

25 MS. STOLL-DeBELL: Yes, and the item master

LOHKAMP - CROSS

1083

1 itself is not published by a vendor.

2 THE COURT: And that's basically your defense
3 in this case, isn't it?

4 MS. STOLL-DeBELL: It's one of them.

5 THE COURT: Well, it's the principal one,
6 isn't it.

7 MS. STOLL-DeBELL: The principal one in that
8 item master is not a catalog published by a vendor,
9 yes.

10 THE COURT: The principal defense to the
11 issue of catalog, isn't it?

12 MS. STOLL-DeBELL: Yes.

13 THE COURT: Objection overruled, but the jury
14 can make its decision on the fact whether it's
15 admitted only to do -- not for the definition of
16 "catalog," but having to do with published by a
17 vendor. And those are issues that you'll have to
18 argue based on the testimony and the record.

19 MS. STOLL-DeBELL: Thank you.

20 THE COURT: That's all it's admitted for,
21 ladies and gentlemen.

22 Who puts it in the catalog doesn't change the
23 definition of the catalog that the Court has construed
24 because the Court's construction doesn't mention who
25 puts the catalog together. All right.

LOHKAMP - CROSS

1084

1 BY MS. STOLL-DeBELL:

2 Q You probably need me to ask my question again?

3 A Yes, please.

4 Q I'll do the best I can.

5 Who selects the items that are included in item
6 master?

7 MR. ROBERTSON: Can I have a running
8 objection to this line of questioning because I just
9 don't want to keep interrupting?

10 THE COURT: It's the same one I just
11 overruled. So you obviously have that. She's just
12 repeating the question that she had. Go ahead.

13 And running objections to questions are not
14 good things because nobody knows where the running
15 stops. So if you have an objection to a question, you
16 have to raise it, but on this one, you've already
17 raised it.

18 So who in your understanding selects the
19 items to be put in the item master?

20 THE WITNESS: The customer selects the items
21 to be put in the item master.

22 Q Why doesn't Lawson select the items that go into
23 the item master?

24 A Because we don't know what our customers purchase,
25 and we don't have visibility into the items they have

LOHKAMP - CROSS

1085

1 on contract or want to purchase.

2 Q What's the purpose of item master?

3 A The purpose of the item master is to create a list
4 of goods and services that our customers are typically
5 going to want to purchase or maintain in inventory.

6 And so the goal is to be able to make that list
7 available to their employees.

8 Q Is it possible for a customer to decide to include
9 every item a vendor sells in the item master?

10 MR. ROBERTSON: Objection. It calls for
11 speculation, Your Honor.

12 THE COURT: Well, if he knows.

13 Do you know that?

14 THE WITNESS: Yes, I do know that.

15 THE COURT: All right.

16 A It is possible, but our customers typically --

17 THE COURT: All she asked is: Is it
18 possible?

19 A Yes, it's possible.

20 Q Have you ever seen one of your customers or are
21 you aware of a situation where one of your customers
22 decided to include every single item a vendor sells in
23 their item master?

24 A I'm not aware of that situation.

25 Q Do you encourage customers to include all the

LOHKAMP - CROSS

1086

1 items that a vendor sells in item master?

2 A No, we do not.

3 Q Why?

4 A Because our customers are usually buying our
5 system to put a limited set of items, the ones that
6 they have on contract, the ones that they want to
7 drive standardized purchasing against.

8 Q When you say "standardized purchasing," can you
9 tell the jury -- describe what you mean by that.

10 A What I mean by that is our customers are looking
11 to implement our systems to typically drive savings in
12 what they are buying. So they want to make available
13 to their employees only a limited set of options of
14 things to purchase, and they want to make sure it's
15 got their negotiated price from their vendor.

16 Q Is there any benefit to a customer including an
17 item in the item master that they don't want to
18 purchase?

19 A No.

20 Q Are there detriments to doing that?

21 A The detriment is that they have to then maintain
22 that on an ongoing basis.

23 Q Does that take time?

24 A It does take time.

25 Q Does it cost money to do that?

LOHKAMP - CROSS

1087

1 A It costs money of the people who need to maintain
2 it.

3 THE COURT: You have to maintain -- what you
4 do you mean by maintaining? Suppose I have a catalog
5 page that I've put together with item master, and I
6 put in everything that I want to put in, but I also
7 put in that this person sells toilet tissue. Are you
8 telling me it costs money to keep that item in the
9 system on my list?

10 THE WITNESS: It costs money -- the time to
11 initially load it.

12 THE COURT: To load what? One item?

13 THE WITNESS: To load that one line item.
14 Just the time it takes to load that. And then if the
15 item changes, you need to update that, the time it
16 takes to update.

17 THE COURT: If I don't use it, it doesn't
18 cost me. If I don't want to update it, I don't have
19 to incur any time to correct it then; is that right?

20 THE WITNESS: That's correct, if you don't
21 want to change it at all.

22 THE COURT: So if I put something in there by
23 accident, it's not going to cost me extra to keep it
24 in there.

25 THE WITNESS: No, sir.

LOHKAMP - CROSS

1088

1 THE COURT: Unless I want to follow it, and
2 if it changes, then I have to put in a new number or
3 item number or something else; is that what you're
4 saying?

5 THE WITNESS: Yes. If you need to maintain
6 it, it takes the time to change it. If you need to
7 update it, for example. But if you don't ever want to
8 change it, there's no additional cost.

9 THE COURT: But the maintenance that you're
10 talking about is the keeping track of the item number
11 if it changes?

12 THE WITNESS: It could be keeping track of
13 the item number. It could be a change to the price if
14 it changes. It could be getting an update that's no
15 longer available for sale. The model changes.

16 THE COURT: All right. Thank you.

17 BY MS. STOLL-DeBELL:

18 Q Is this updating and maintaining process typically
19 done on a large group of items at one time?

20 A It really depends upon the particular product and
21 situation.

22 Q You were asked questions about PO 536?

23 A Yes.

24 Q What is that again?

25 A It's a vendor agreement load program.

LOHKAMP - CROSS

1089

1 MS. STOLL-DeBELL: Bill, can we go to PX 113,
2 please?

3 THE COURT: I think that one is in that first
4 notebook you had there, Mr. Lohkamp.

5 THE WITNESS: Here it is.

6 A Okay.

7 Q I think ePlus' counsel asked you about the first
8 step in the process of importing a vendor agreement.

9 A Yes.

10 Q Are there other steps that are required to import
11 a vendor agreement?

12 A Yeah, I mean there are additional steps after the
13 first step.

14 Q What I'd like to do is have you walk me through
15 what all the different things are that you have to do
16 when you're using PO 536 to import a vendor agreement.

17 MR. ROBERTSON: Your Honor, I didn't ask
18 about importing a vendor agreement. I asked about
19 importing vendor catalog data, which is what the
20 process is describing.

21 THE COURT: Is that what your question is?
22 You did ask about that second sentence in the third
23 paragraph, the first step will be to obtain the vendor
24 catalog information. And then he did ask some other
25 things in there, but it all had to do with loading

LOHKAMP - CROSS

1090

1 catalogs, not loading agreements.

2 MS. STOLL-DeBELL: Well, Your Honor, if I
3 could ask the witness some questions, I think that
4 this particular function of Lawson is called different
5 things, and those different things all relate to the
6 same thing. So if I could ask him a couple questions
7 about that, I think he can explain it so that we all
8 understand it a little better.

9 BY MS. STOLL-DeBELL:

10 Q Is PO 536 sometimes used to refer to loading or
11 importing vendor agreements?

12 A Yes, it is.

13 Q Well, is it also sometimes referred to as
14 importing vendor catalogs?

15 A Yes, it's sometimes referred to as that.

16 Q Is this the same thing whether it says its
17 importing a vendor agreement or a vendor catalog?

18 A It's the same program.

19 Q Is it sometimes --

20 THE COURT: But they are different things,
21 the vendor catalogs and the agreements are different
22 things, right or wrong? To me it sounds like that's
23 right, but I may be --

24 THE WITNESS: When I think of what's being
25 imported, I'm thinking of the list of products and

LOHKAMP - CROSS

1091

1 prices from the vendor. And --

2 THE COURT: I'm simply asking you is, is a
3 loading of vendor catalogs different than loading
4 vendor agreements? Is that right? Are they
5 different?

6 THE WITNESS: I mean, it's the same process.

7 THE COURT: I know, but that's not the
8 question. The question is not whether they are the
9 same process that you do it by. The question is: Are
10 they the same things that you're using the same
11 process to do?

12 THE WITNESS: I mean, I guess they are the
13 same thing.

14 THE COURT: You think a price agreement, an
15 agreement with a vendor, and loading the vendor's
16 catalogs are the same thing? I want to make sure we
17 know what you say.

18 THE WITNESS: Yeah, I'm saying that the
19 loading of the vendor agreements is what I think of as
20 loading the vendor catalog.

21 Q So PO 536 is used to load information from a
22 vendor; is a right?

23 A Yes.

24 Q And that information from a vendor is sometimes
25 referred to as a vendor agreement?

LOHKAMP - CROSS

1092

1 A Yes.

2 Q And its sometimes referred to as a vendor catalog?

3 A Yes.

4 Q And it's sometimes referred to as a vendor file,
5 isn't it?

6 A Sometimes I've heard that used.

7 Q But it's the same thing that is being loaded in,
8 whether it's called a vendor agreement, or a vendor
9 catalog, or a vendor file; is that right?

10 MR. ROBERTSON: Could we be a little less
11 leading at this critical stage of this discussion?

12 THE COURT: I think just let him testify.
13 Maybe you need to ask him what is it that makes an
14 agreement and a catalog the same thing. Because he's
15 testified that the vendor agreement was a contract,
16 and a vendor agreement and the vendor's catalogs, it's
17 kind of hard to understand why they would be the same
18 thing. So if you're trying to establish that, maybe
19 you ought to ask why he thinks they are the same.

20 And in answering, Mr. Lohkamp, we're not
21 talking about the process. The process doesn't make
22 any difference to the question. It is what is it that
23 goes in.

24 In other words, if you have got an oven and
25 you're putting bread in. Is that the same thing as a

LOHKAMP - CROSS

1093

1 pizza, in your mind? That's the question, if you
2 understand. In other words, it's what's going in that
3 makes a difference.

4 All. Now ask the question.

5 BY MS. STOLL-DeBELL:

6 Q Can you explain to me why you think that the
7 vendor agreement and vendor catalog that can be loaded
8 into the system via PO 536 is the same thing?

9 A The reason I think it's the same thing is because
10 it includes things like the vendor catalog number. It
11 includes unit of measure.

12 THE COURT: What's "it"?

13 THE WITNESS: The file that's initially
14 received from the vendor then converted into the CSV
15 files, which is common separated value file. That
16 gets loaded into the software. It contains the
17 information about the product that's needed to
18 purchase the product, and should include the price for
19 that item. And we store the price from that
20 particular vendor in our vendor agreements. So that's
21 why I think of them as the same thing because I get
22 that information from the vendor. I include the
23 products and the prices, and those get loaded into the
24 vendor agreement file.

25 THE COURT: You load all those things before

LOHKAMP - CROSS

1094

1 you ever get the vendor's contract agreement to pay
2 you your \$2,000? The agreement is the agreement
3 between you and the vendor to pay you for your
4 services and says what you're going to do, I think, is
5 what you've testified to before.

6 Now you're saying that you have data that you
7 load once you have the contract. And you think they
8 are the same. I'm having trouble understanding that.
9 Can you help us out a little bit?

10 THE WITNESS: Yes. When our customers are
11 loading these products, they have a contract with the
12 vendor to get the price and the products. So when
13 they are loading the initial set of items, they are
14 loading the contract, the contract price, and the item
15 information at the same time.

16 THE COURT: Can they do that at the same time
17 that they are negotiating a contract with the supplier
18 or are they two different steps?

19 THE WITNESS: They would do that after they
20 have negotiated the contract.

21 THE COURT: All right. Then the agreement
22 that you're talking about precedes the loading of the
23 information from the catalog; is that right?

24 THE WITNESS: Negotiating and agreement would
25 precede that, yes.

LOHKAMP - CROSS

1095

1 BY MS. STOLL-DeBELL:

2 Q So, Mr. Lohkamp, I think just to try and clear up
3 some of this confusion, within the Lawson databases,
4 is there a set of tables called "vendor agreement"?

5 A Yes.

6 Q What is that?

7 A That's a set of tables that stores information
8 about the products you have on contract with the
9 particular vendor and the price you pay for that.

10 Q So that vendor agreement table is different than a
11 contract that the customer has entered into with a
12 vendor about what items they are going to buy, and
13 what price they are going to pay, and whatever else
14 might be in a contract like that; is that right?

15 A The table itself is different. You load the
16 results of that negotiated contract into the vendor
17 agreement.

18 THE COURT: Just go on to something else. I
19 think we understand where he is.

20 MS. STOLL-DeBELL: Okay.

21 BY MS. STOLL-DeBELL:

22 Q So I wanted to ask you some questions about the
23 actual process of loading this I'll call it a vendor
24 file into Lawson's databases using PO 536.

25 A Okay.

LOHKAMP - CROSS

1096

1 Q I'll just ask you to walk us through that process.

2 What's the first thing that needs to happen?

3 THE COURT: Which process? And loading "it,"
4 what do you mean by "it"?

5 MS. STOLL-DeBELL: I mean loading a vendor
6 file, a file of vendor information, into Lawson's
7 databases using this PO 536 method that we've talked
8 about.

9 THE COURT: How do you do that?

10 MS. STOLL-DeBELL: Yes.

11 A The first step is to request a list of items and
12 prices from your vendor and get that file from the
13 vendor. And then transform that file into the PO 536
14 format. So it needs to be turned into the format that
15 can be loaded into the Lawson software.

16 And then you go through program process of
17 deciding which items to load. You have to assign a
18 Lawson item number to any new items you're adding. So
19 that's the key item number. And you may decide to add
20 additional things like inventory classes or purchasing
21 classes that are user defined categories to those
22 items to the import process.

23 Q I think you said one of the steps is that the
24 customer has to select which items from the vendor
25 file they actually want to put in the system?

LOHKAMP - CROSS

1097

1 A Yes.

2 Q Then you said it's transformed into the format
3 required by Lawson Software?

4 A Yes, it depends on --

5 THE COURT: Let's don't repeat everything you
6 said. The jury was listening. And we can't be just
7 having you repeat it.

8 So just ask him another question.

9 Q Do the customers change things before or as part
10 of that transformation process?

11 MR. ROBERTSON: Objection, relevancy, Your
12 Honor.

13 MS. STOLL-DeBELL: Your Honor, I think it's
14 relevant to say that what the customer receives from
15 the vendor as this vendor file gets changed
16 substantially before it's put into Lawson's system.
17 It's relevant to --

18 THE COURT: That doesn't have anything to do
19 with the claim constructions, as I understand it.

20 MS. STOLL-DeBELL: I think it does, Your
21 Honor, because Dr. Weaver testified --

22 THE COURT: Let me tell you what I think
23 we'll do. We'll let the jury go on to lunch and I'm
24 going to hear what you-all have to say about this so
25 we don't have to subject the jury to the back and

LOHKAMP - CROSS

1098

1 forth.

2 You will have an hour to eat, at least,
3 because they are going to eat some lunch too. So
4 we'll let you know later. You can just take your pads
5 with you.

6 (The jury is out.)

7 MR. ROBERTSON: Your Honor, may I ask that
8 the witness be excused?

9 THE COURT: Yes. Mr. Lohkamp, if you will
10 just step outside, please, sir. And don't discuss
11 your testimony with anyone during the break except the
12 lawyers in the case. You're welcome to do that.

13 MR. ROBERTSON: Your Honor, we have an
14 agreement that once he's taken the oath, he can't
15 discuss anything, even with his own lawyers.

16 THE COURT: You do have that agreement?

17 MS. STOLL-DeBELL: We do. We won't.

18 (The witness is excluded from the courtroom.)

19 MS. STOLL-DeBELL: So, Your Honor, I think
20 this goes to the heart of the issue of whether item
21 master meets the Court's definition of "catalog."
22 And --

23 THE COURT: I know you think that. I
24 understand that. What I need to know is why you think
25 it. What you're talking about is who selects the

LOHKAMP - CROSS

1099

1 items to go into the item master and what happens to
2 the list of items in the item master once they are
3 selected. Right?

4 MS. STOLL-DeBELL: Well, I think --

5 THE COURT: That's where we are right now.

6 MS. STOLL-DeBELL: For the taking, what a
7 vendor gives the customer, this vendor file, and what
8 has to be done to it to get it into item master needs
9 to be changed substantially. Things are added.
10 Things are deleted. Things are changed. And by the
11 time it gets into item master, it's totally different
12 than what's in a vendor's catalog.

13 THE COURT: What part of the claim
14 construction is it addressed to is the question.

15 MS. STOLL-DeBELL: Well, it goes to an
16 organized collection of items and associated
17 information that's published by a vendor.

18 THE COURT: No, we're not going to do it that
19 way. You're reading the whole thing.

20 Are you telling me that that has to do with
21 an organized collection of items? No, it can't be.

22 MS. STOLL-DeBELL: That is published by a
23 vendor.

24 THE COURT: So it goes to the topic of
25 whether or not the items in the item master are

LOHKAMP - CROSS

1100

1 published by a vendor?

2 MS. STOLL-DeBELL: Yes, it does.

3 THE COURT: That is the only relevance that
4 it has?

5 MS. STOLL-DeBELL: Yes, but I think it's very
6 high relevance, Your Honor.

7 THE COURT: I don't care whether it's good,
8 top level or what. We get to that when we do a 403
9 analysis, but the starting point in determining
10 relevance is, is it relevant?

11 MS. STOLL-DeBELL: Yes, it does, Your Honor.

12 THE COURT: And that's your theory.

13 MS. STOLL-DeBELL: Yes, and I understood Dr.
14 Weaver to argue once something is in a catalog
15 published by a vendor, it's always published by a
16 vendor. And we're saying no, it's not.

17 THE COURT: I don't think that's what he
18 said, but that's not really what the issue is. The
19 issue is: Is this relevant to the issue of
20 infringement?

21 All right, Mr. Robertson, why is it not
22 relevant for them to explain "published by a vendor"
23 this because it's relevant to "published by a vendor"?
24 I don't have any evidence at this stage what
25 "published by a vendor" means to one of ordinary skill

LOHKAMP - CROSS

1101

1 in the art. And I haven't been called upon to
2 interpret that term, have I, Ms. Stoll-DeBell?

3 MS. STOLL-DeBELL: I believe that Dr. Weaver
4 -- well, I think Dr. Weaver gave two definitions. I
5 think he said that "published" means publicly
6 disseminated. I'm sure he said that. And I think he
7 also said it means originated.

8 THE COURT: Public dissemination by anybody
9 is still public dissemination. So then the question
10 is, is it publicly disseminated by a vendor?

11 MS. STOLL-DeBELL: I agree with that, Your
12 Honor.

13 THE COURT: It is publicly disseminated by a
14 vendor if the vendor provides it into the realm of the
15 public knowledge; isn't that right?

16 MR. ROBERTSON: Yes, Your Honor.

17 MS. STOLL-DeBELL: Yes, I think --

18 THE COURT: So what difference does it make
19 if your customer takes items that are already made
20 known and publicly disseminated by a vendor and simply
21 puts them in a different order and puts some different
22 numbers on it as to the issue of infringement in this
23 case?

24 MS. STOLL-DeBELL: Because we don't take what
25 is publicly disseminated and put it in item master

LOHKAMP - CROSS

1102

1 that's what I'm trying to get out of the witness.
2 It's changed. The price is not the list price
3 anymore. It's some special price that is
4 confidential, that is secret.

5 The item information is something that is
6 actually -- the item description is created by the
7 customer. It's no longer the item description that is
8 in a vendor's published catalog. Very little remains
9 the same when it finally ends up in item master.

10 THE COURT: Does that change it from being
11 items and associated information published by a
12 vendor?

13 MS. STOLL-DeBELL: Yes.

14 THE COURT: The fact that you have altered it
15 changes it? Because it still contains some kind of
16 part number. It contains price, catalog number,
17 vendor name, vendor ID, a textual description, and I
18 don't believe your item master contains images,
19 though, does it, except through the Punchout process?

20 MS. STOLL-DeBELL: I think it can, Your
21 Honor. It can have --

22 THE COURT: It's capable of having an image.

23 MS. STOLL-DeBELL: Right, but, Your Honor --

24 THE COURT: All right. Let me hear --

25 MS. STOLL-DeBELL: My point is this is all

LOHKAMP - CROSS

1103

1 different, though.

2 THE COURT: I understand, and I don't think
3 that's makes any difference. That's the point I'm
4 trying to make to you.

5 I've never thought it made any difference.
6 I've never understood your argument to make any sense,
7 but the question is whether I'm entitled to make that
8 judgment or not and whether that comes in or not.

9 Now, let me hear from Mr. Robertson.

10 MR. ROBERTSON: Yes, Your Honor.

11 The first thing, it's important to
12 understand --

13 THE COURT: Why don't you come up hear so the
14 court reporter can hear.

15 MR. ROBERTSON: Yes, Your Honor.

16 First, it's important to understand what the
17 origin of this "published by a vendor" language, where
18 did it come from. Because this was language --

19 THE COURT: Wait a minute. Let me get -- my
20 copy of the patent is in the jury book, which is back
21 in my office, I think.

22 THE CLERK: We have one coming up, Your
23 Honor.

24 THE COURT: I have it. Thank you very much.

25 All right. Let's take in the -- what are we

LOHKAMP - CROSS

1104

1 going to work with? The '683 patent?

2 MR. ROBERTSON: Let me maybe make it easy for
3 you, Judge. Let me make a representation and see if
4 Lawson agrees or disagrees.

5 There's not a single claim that's at issue in
6 this case that has the claim terms "published by a
7 vendor" in them. Not one. How did we get this
8 "published by a vendor"? It was introduced by Lawson
9 in their argument with respect to what a catalog is.
10 They came up with it. They suggested it to the Court.

11 At the time of the Markman ruling, I tried to
12 alert the Court to what I thought was behind this,
13 that it was going to be a vessel in which Lawson was
14 going to try to pour all of these notions like they're
15 doing now, that because the data gets reformatted or
16 because the data can be selected by the customer,
17 although I think the witnesses have testified that
18 they'll load the catalog data for you, that because
19 they may take something that has a textual description
20 of 80 characters and reduce it to 32 characters, that
21 somehow takes it outside the scope of your claim
22 construction.

23 My point is, it doesn't matter who selects
24 it. It doesn't matter if it's reformatted in some
25 way. It doesn't matter who the source is really as

LOHKAMP - CROSS

1105

1 long as it satisfies the Court's claim construction.

2 So the only thing they hang their hat on is
3 this "published by a vendor" because you're hearing
4 consistently from all the witnesses that it does have
5 all the attributes of an organized collection of items
6 and associated information, which includes part
7 numbers, and prices, and catalog numbers, and vendor
8 names, and vendor IDs, and textual descriptions, and
9 it can have images, both in the external Punchout
10 system and in the internal system.

11 So "published by a vendor" is their
12 non-infringement argument. And, quite frankly, it's
13 been sort of a systematic rewriting of your claim
14 construction, which has formed the basis of their
15 entire infringement defense.

16 When they create these documents like
17 Plaintiff's Exhibit 113, before this lawsuit they call
18 it "vendor catalog data." They tell us in all the
19 RFPs they can import vendor catalog data.

20 THE COURT: I know that, but that's just
21 something they are going to have to live with, and
22 they're going to have to make an argument that, well,
23 they didn't really mean what they said at the time,
24 and they're going to choke on that argument because
25 they're going to have to make it so many times, that

LOHKAMP - CROSS

1106

1 the paper they are going to have to eat to change it
2 is going to throttle their argument, but that's not
3 point here.

4 MR. ROBERTSON: My point is if we're looking
5 just at 113, for example --

6 THE COURT: Where in the specification did
7 the term "published by a vendor" come into play?

8 MR. McDONALD: It's in column 4, Your Honor,
9 beginning on line 46, it's a paragraph that goes to
10 line 60 of the '683 patent.

11 THE COURT: Column 4 what, sir?

12 MR. McDONALD: Beginning on line 46, Your
13 Honor, there's a whole paragraph there that refers to
14 the catalogs and the catalog database, and it uses the
15 term "published" numerous times for each type of
16 catalog in the catalog database.

17 THE COURT: All right.

18 MR. ROBERTSON: So, Your Honor, exactly.
19 First of all, it says, for example, it can contain
20 this. But when it says "published by a vendor," it
21 doesn't say, well, if it's selected by the customer,
22 it's not published by a vendor. If it's reformatted,
23 it's not published by a vendor.

24 THE COURT: I agree with that. And the
25 question is: Are they entitled to make a showing and

LOHKAMP - CROSS

1107

1 put to the jury the simple question that it is not a
2 catalog because the clear catalog material that they
3 are putting into this item master is not selected by
4 the vendor no matter how supported with logic that
5 argument is? That's the issue.

6 MR. ROBERTSON: Well --

7 THE COURT: Or is the issue whether somehow I
8 have imported into the claim the language of the
9 specification?

10 MR. ROBERTSON: On numerous occasions, Your
11 Honor has given its common sense definition of what it
12 understands "published" to mean and "published" means
13 and what I understand Your Honor means is that in some
14 way it is publicly disseminated either in written
15 form, which can include an electronic form, or
16 verbally. I agree with that.

17 And I agree with the fact that the evidence
18 shows that the vendor is the one who supplies that
19 information. Indeed, even in this document we're
20 talking about now, Plaintiff's Exhibit No. 113 --

21 THE COURT: Wait just a minute, though. I
22 think it's true that if I were the finder of the fact,
23 what I would say is, I don't buy the assertion that
24 simply because a Lawson customer or if Lawson is doing
25 it, which the evidence is clear that Lawson often

LOHKAMP - CROSS

1108

1 does, the taking of the data that's published in a
2 catalog already and putting it into some other form is
3 not does not make it a catalog.

4 I mean, all they're doing is making a
5 different catalog or a series of different catalogs or
6 if they import the whole thing, the whole catalog.
7 And that would be the end of it.

8 The question is: Are they entitled to make
9 this argument, that is the simple argument that
10 because the process that the witness has described in
11 building the item master has, in instances where
12 Lawson is not doing it, the customer is selecting the
13 item, but in the instances where Lawson is doing it,
14 clearly Lawson is selecting the item?

15 MR. ROBERTSON: Well, I don't think it makes
16 a difference, Your Honor.

17 THE COURT: Or Lawson is inputting the items
18 selected by the customer, I think, is a better way to
19 put it.

20 MR. ROBERTSON: Again, I don't think who
21 inputs the data makes a difference under your
22 construction as long as it ends up being a catalog
23 that meets the attributes you defined.

24 THE COURT: Am I granting summary judgment if
25 I sustain this objection, or a Rule 50 motion if I

LOHKAMP - CROSS

1109

1 sustained this objection?

2 MR. ROBERTSON: I think the arguments they
3 are making with respect to selection or reformatting
4 or whatever can't avoid the definition of Your Honor.
5 What they want to do is redefine what "published by a
6 vendor" means, that the Court hasn't even defined, and
7 then say because we don't --

8 THE COURT: What if I define it right now?
9 What if I tell the jury that "published by a vendor"
10 means to make generally known, to declare publicly or
11 make generally known, disclose or circulate, which is
12 the standard dictionary definition. I don't know if
13 the computer dictionary or specialized dictionary has
14 any different definition than the Webster or the Third
15 New International have.

16 MR. ROBERTSON: I don't think it's being used
17 in any kind of specialized sense in this patent. I
18 will observe, Your Honor, that right above where Mr.
19 McDonald identified the section about published by a
20 vendor in the specification, it makes clear -- and let
21 me start at line 42, halfway across, it says, "The
22 nature of the business that the customer using the
23 electronic sourcing system 5 conducts will determine
24 which product catalogs are made part of the catalog
25 database."

LOHKAMP - CROSS

1110

1 So, in other words, even the specification is
2 saying the customer can make determinations as to what
3 catalogs or what parts of catalogs it wants to include
4 because if you go down, it even says that you may want
5 to make decisions to just have certain products
6 identified in the catalog database and not all the
7 products.

8 So I don't know that you're granting summary
9 judgment of non-infringement. I know that it is one
10 basis of their positions on non-infringement. I don't
11 know that it's the only basis.

12 THE COURT: Well, is it the equivalent of
13 summary judgment if the only issue is whether it's a
14 catalog?

15 MR. ROBERTSON: I think appropriately it is
16 keeping out irrelevant evidence they should not be
17 able to argue to the jury satisfies your claim
18 construction, and that is a systematic effort to
19 rewrite it in order to conjure up a non-infringement
20 argument.

21 THE COURT: All right.

22 MR. McDONALD: Your Honor, may I respond or
23 would you like to hear from Ms. Stoll-DeBell?

24 THE COURT: Whichever you-all want to do is
25 all right with me.

LOHKAMP - CROSS

1111

1 Why shouldn't I just go on and tell the jury
2 that "published" means to make generally known, to
3 declare publicly or make generally known, disclose or
4 circulate, to impart or acknowledge.

5 MR. McDONALD: I think we'd be fine with
6 that. I don't think we're really arguing over what
7 "published" means. That's the definition that's
8 consistent with our theory here.

9 I understand Your Honor may not be accepting
10 our version of it, but it's a fact issue.

11 THE COURT: Why is it a fact issue?

12 MR. McDONALD: Because the question is, is
13 the item master that Lawson has at least two product
14 catalogs, which is required by several of the claims,
15 or a collection of catalogs, as required by all but
16 one of the other claims.

17 So we're applying this definition to the
18 facts of case as to what is in the item master.

19 THE COURT: You're lumping so much together,
20 you're not explaining to me who selects the items to
21 go in there, what part of your argument it really
22 relates to.

23 MR. McDONALD: Well, the definition here is
24 an organized selection of items and associated
25 information published by a vendor, and it goes from

LOHKAMP - CROSS

1112

1 there.

2 So we're talking about trying to tell the
3 jury what is the organized collection that's involved
4 here. Maybe it's not even organized because if this
5 gets put in in the order that the customer chooses,
6 but it's some collection of items and associated
7 information.

8 What is that thing? And what is it and how
9 it came to be is something that occurred after they
10 even got data from the vendor. We're saying that
11 collection couldn't possibly have been published by a
12 vendor. He wasn't even there when the collection came
13 into being, and the vendor had no interaction with the
14 customer once the customer organized or collected that
15 information into its item master database.

16 THE COURT: Are you saying now that it's
17 relevant to whether it's a collection of items as
18 opposed to what Ms. Stoll-DeBell told me, which is
19 whether it's published by the organized collection of
20 items and associated information as published by a
21 vendor?

22 MR. McDONALD: Well, they go together because
23 she's bringing out the issue this was published. And
24 the question is: What is it that's being published?
25 And I'm just trying to bring that into the analysis

LOHKAMP - CROSS

1113

1 here because I think it's important to understand what
2 is it that we're talking about that's being published.

3 And I think that's a fact issue here. What
4 is it in the item master? What is the collection?
5 Where does it come from is relevant to whether a
6 vendor could have published it if it did not even come
7 into being as a collection until the vendor didn't
8 have any role with it anymore.

9 There's all sorts of changes after the vendor
10 is out of the picture that come to being before this
11 item master collection of information, and it's kind
12 of fuzzy, I think, what their position is as to how
13 many catalogs is in that item master. But that's
14 their position. I guess they decided we have two
15 catalogs.

16 Well, if that's what we're talking about, how
17 much of that actually occurred after the vendor had
18 any involvement is very relevant to whether the vendor
19 could have possibly published whatever they say,
20 whether it's 1, 2 or 5,000 catalogs they say is in the
21 item master.

22 THE COURT: You take the position at base on
23 this point that even though the vendor publishes the
24 information in its catalog, and even though your
25 customer goes to that catalog, and let's say they are

LOHKAMP - CROSS

1114

1 10 catalogs that your customer uses to prepare what he
2 wants to prepare in the item master, the collection of
3 items is no longer published by a vendor because your
4 process allows transformation of it in part. Isn't
5 that what you're saying?

6 MR. McDONALD: I'd say there's a lot more to
7 it than that.

8 THE COURT: Well, I haven't heard it yet. I
9 haven't heard your side of the case either. What else
10 is there?

11 MR. McDONALD: Well, for one thing this file
12 that comes in, whether its called a vendor catalog or
13 vendor agreement or anything else, that's not the same
14 thing that a vendor publishes as the Court just
15 suggested we define that.

16 This is a personalized private file for that
17 customer that has their own private pricing
18 information in it, their own products that are
19 pursuant to their agreement, and they double check it
20 and throw out more. But there is no evidence at all
21 that that file is anything that's ever been published
22 by a vendor.

23 We haven't had an iota of proof on that in
24 this case that that incoming file is even published by
25 a vendor.

LOHKAMP - CROSS

1115

1 THE COURT: What incoming file?

2 MR. McDONALD: The file that's called the
3 vendor catalog file or the vendor agreement.

4 THE COURT: That's a file that -- it's not an
5 incoming file. It's in your system. And the customer
6 is taking at your direction, or you're doing it, the
7 information from a catalog and putting it into a
8 somewhat different format, and then you're taking that
9 format and putting it into the item master. But some
10 of the basic information that originally was with the
11 vendor still stays with the file.

12 If that's your theory, I think you've got
13 some problems, but --

14 MR. McDONALD: I think it's a fact issue.

15 THE COURT: I don't think the jury is going
16 to buy that, but the question is, is it a fact issue
17 or is it something I should decide?

18 MR. McDONALD: Certainly it's a fact issue, I
19 think, Your Honor, and maybe there's some different
20 labels on it, but there is some file that comes into
21 the customer's system that supposedly comes from a
22 vendor.

23 Most of the time I think the testimony has or
24 will show that we're actually just loading a
25 customer's item master that they had in the prior

LOHKAMP - CROSS

1116

1 system they used before they came from Lawson.

2 THE COURT: Sometimes you are, but sometimes
3 you're creating it.

4 MR. McDONALD: Actually, the majority of the
5 time it's from a legacy system.

6 THE COURT: It doesn't make any difference
7 whether it's a majority of the time. If you do it at
8 all, that's the end of it, or if it's capable of it.

9 MR. McDONALD: So you've got that group,
10 though, and I think that record is not made clear to
11 the jury yet, though, that those things are from
12 legacy systems.

13 But even for that subset that comes from a
14 vendor, there hasn't been any evidence that the data
15 in that file is published by a vendor. That pricing
16 information is a perfect example. That's a private
17 agreement file.

18 Moreover, it changes, and so what's in the
19 item master looks very, very different from that
20 incoming file that would come from a vendor in that
21 subset of cases.

22 That's a whole new collection of items and
23 associated information. We're saying that's the
24 question, that that collection that's in the item
25 master, that's what their expert said is what's

LOHKAMP - CROSS

1117

1 comprising these multiple catalogs.

2 So let's look at the facts regarding what
3 that item master is. And I think we should be
4 entitled to present those facts.

5 THE COURT: All right. It's your objection.
6 You can have the last word.

7 MR. ROBERTSON: Thank you, Your Honor. First
8 of all, published by a vendor doesn't have any
9 definition. It's just there. It should be construed
10 by its ordinary meaning. And I think the Court's
11 construction or the Court's interpretation of what the
12 plain meaning is of published by a vendor is fine.

13 I will say there are circumstances where the
14 vendor provides confidential item information because
15 they don't want their price lists to be exposed. So
16 they have an agreement with the customer that they'll
17 be getting some confidential pricing information.
18 That does happen.

19 But in large part, it is publicly available
20 or made known or made aware of. So I think your
21 plain, ordinary meaning of those words would make this
22 line of questioning entirely irrelevant is my first
23 point.

24 I will say even the document -- when I hear
25 there's no evidence, and we've gone through repeatedly

LOHKAMP - CROSS

1118

1 where they've provided services to load the catalog
2 data, the documents say they load the catalog data.

3 This one we were last on, we're still on,
4 Plaintiff's Exhibit No. 113 says, "The purpose of this
5 document is to define a new process that will read a
6 vendor supplied file of items and add the items to the
7 item master and the item's price to the vendor
8 agreement file."

9 It then goes on and says, "The process for
10 reading the vendor catalog data into the Lawson system
11 will be performed in multiple steps."

12 So even in this document they're talking
13 about vendor supplied item information. So there's
14 been a ton of evidence as to this.

15 Now, the point is it really, you know,
16 doesn't matter what happens to it afterwards as long
17 as it satisfies the Court's construction. And if it
18 ends up having the attributes that you've identified
19 should preferably be included in this organized
20 collection of items such as part number, price,
21 catalog number, vendor name, vendor ID, textual
22 description, etc., it satisfies that claim term.

23 So these things about do we reform it, do we
24 convert the data somehow, can we let the customer
25 select it some of the times, will we provide the

LOHKAMP - CROSS

1119

1 service? Sure. We'll do that a little it. But
2 somehow it doesn't even manner if they provide the
3 service or not in my view.

4 If it ends up in a database, and it satisfies
5 the Court's construction, and it satisfies the plain
6 and ordinary everyday meaning of "published," then
7 this whole line of questioning is irrelevant, and we
8 should not be wasting the Court's time and the jury's
9 time with these kind of questions. This is all
10 misdirection, Your Honor.

11 THE COURT: Did this issue come up in SAP or
12 Ariba?

13 MR. ROBERTSON: No, Your Honor, because
14 "published by a vendor" was not included in the
15 definition of a catalog. I think it had the Court's
16 entire, and I'll have to check on this, but I think it
17 had the Court's entire construction absent the words
18 "published by a vendor," and that's why they've seized
19 on those four words to try and manufacturer a
20 non-infringement argument.

21 MR. McDONALD: SAP actually involved
22 published catalogs. There's documentation that that's
23 what they were doing. So it's a whole different case
24 than this one.

25 I guess I hear their theory here is one piece

LOHKAMP - CROSS

1120

1 of information, if that survives the item master, then
2 it was published and that means it's published.

3 THE COURT: No, it's a lot more than that.
4 It's virtually everything, according to them, with the
5 exception of price where it's made confidential
6 appears in the item master in one way or another.

7 You have added to it the Lawson number as
8 well.

9 MR. McDONALD: There's actually a very small
10 percentage of that information in the item master that
11 comes from the vendors. So I think we should be
12 entitled to develop that record here.

13 THE COURT: What do you say comes from the
14 vendor? Let's take the part number. Does that come
15 from a vendor in the legacy system? Yes or no?
16 Answer the question: Yes or no?

17 MR. McDONALD: There's oftentimes a catalog
18 part number that comes from the vendor.

19 THE COURT: Then when it goes into the item
20 master, does the part number disappear?

21 MR. McDONALD: I think that is typically past
22 through to the item list.

23 THE COURT: Is the price in the legacy
24 system?

25 MR. McDONALD: That'll be a different price

LOHKAMP - CROSS

1121

1 than the price that is in the published vendor's
2 catalog.

3 THE COURT: If in fact there is a different
4 price. If it's the same price, it will be the same
5 price. Is that right or wrong? He said it happens
6 sometimes that they are confidential.

7 MR. McDONALD: I think it's more often than
8 not that they are confidential. Certainly if there's
9 a group that is confidential, if there's a group
10 that's the published price, it could be both.

11 THE COURT: All right. The catalog number.
12 Does it have the vendor's catalog number in it?

13 MR. McDONALD: I'm not sure it has a separate
14 part number and a catalog number. I think it's one
15 number.

16 THE COURT: Does it have the vendor's name in
17 it?

18 MR. McDONALD: The item master does not have
19 the vendor name.

20 THE COURT: But the item master has a
21 vendor -- works in conjunction with the what?

22 MR. McDONALD: Vendor item table.

23 THE COURT: Vendor item table. And there's a
24 code that switches you from the item master or that
25 correlates between the item master and the vendor

LOHKAMP - CROSS

1122

1 table, right?

2 MR. McDONALD: Right.

3 THE COURT: So it's there. Vendor ID. Does
4 it have a vendor ID originally? Sometimes yes,
5 sometimes no, I guess, is the answer?

6 MR. McDONALD: It could. It's some table
7 that will have the vendor ID on it.

8 THE COURT: So the same situation. It would
9 be either in there or it would be reachable in
10 correlation with the item tables.

11 MR. ROBERTSON: We saw it in the demos, Your
12 Honor.

13 THE COURT: I thought I saw it.

14 A textual description of the item. Surely,
15 the catalog or the legacy system or the catalog that's
16 coming in has a textual description and do does the
17 item master.

18 MR. McDONALD: This is a very key fact here,
19 though, Your Honor, because the customer has about a
20 32-character field, and they come up with their own
21 descriptions for the items, and they bear no
22 relationship to anything that a vendor publishes.
23 That's a very significant difference because catalogs
24 typically have much longer descriptions. And because
25 it's for this item master, it's something that the

LOHKAMP - CROSS

1123

1 customer buys repeatedly, they already know what it
2 is. They just put in a much shorter description.

3 It's not just a matter of cutting off the
4 vendor's description at 32 characters. They actually
5 come up with their own descriptions. They can have
6 abbreviations that that customer formulates
7 themselves.

8 THE COURT: They convert it to a number they
9 come up with.

10 MR. McDONALD: They come up with their own
11 description, Your Honor, and it may bear no relation
12 to what the vendor describes in a published catalog.
13 The customer may not even see how the vendor describes
14 it in a published catalog. So I wouldn't call it
15 simply a conversion.

16 MR. ROBERTSON: It may not. If it's a mop in
17 the vendor's catalog and they put it in, it doesn't
18 matter if they only have 32 characters, they call it a
19 mop. They don't change the name to something else.

20 THE COURT: How many of these things have
21 more than 32 characters?

22 MR. ROBERTSON: I think the 32-character
23 issue, Your Honor, is again a red herring. What does
24 it matter how long the textual description is in Your
25 Honor's claim construction?

LOHKAMP - CROSS

1124

1 THE COURT: I don't think it makes any
2 difference. I think the problem is with published by
3 a vendor. I'm wondering if I didn't just err in
4 including published by a vendor, and I ought to tell
5 the jury that it's out of the case because I don't
6 know that I did it right now.

7 MR. McDONALD: I think you did it perfectly
8 right.

9 THE COURT: I know you do.

10 MR. McDONALD: The other things is we would
11 have had a chance to argue summary judgment before.
12 There's a reason they didn't move on it. When you
13 look at the context of catalogs as used in these
14 patents and how it's different from the prior art that
15 had parts masters, and we haven't had a chance to get
16 into all that evidence, but when you really read these
17 three patents in the context of the prior art that's
18 even described on the face of them, this definition
19 that you're going to for catalogs would include
20 clearly what's in the prior art. And we think we are
21 entitled to say that's not what was meant here. And
22 we think it would be an error of law for Your Honor to
23 change your ruling.

24 THE COURT: I don't think so, but I tell you
25 how I'm going to solve this. I'm going to hear the

LOHKAMP - CROSS

1125

1 rest of their case, then I'm going to let you bring
2 this witness back and talk, if I decide it's relevant,
3 about all this in your case. For now we'll keep it
4 out.

5 MR. ROBERTSON: Your Honor, after lunch may I
6 provide the Court with the construction of "catalog"
7 by Judge Brinkema and Judge Spencer?

8 THE COURT: Sure. But I remember having them
9 at one time. I don't think I have them now, but I'll
10 be glad to have whatever was done.

11 MR. ROBERTSON: Thank you.

12 THE COURT: All right.

13 I have to tell you, Mr. McDonald, I think
14 that this issue on your part is how many angels can
15 stand on the head of a pin. And I don't think anybody
16 is going to buy it. And if that's what your whole
17 case is all about, I would suggest -- who is helping
18 you-all? Judge Dohnal?

19 MR. ROBERTSON: Yes, Your Honor.

20 THE COURT: I would suggest that you all
21 productively could use some time with Judge Dohnal. I
22 realize that you don't have any damages issues, but
23 if, in fact, infringement is found, you have a high
24 risk of having an injunction entered against you. And
25 that could be just as bad for you-all as damages,

LOHKAMP - CROSS

1126

1 maybe even worse given the size of your company.

2 And I wonder if it's not appropriate for your
3 business people at a high level -- any high level
4 business people here in the courtroom?

5 MR. McDONALD: We have general counsel has
6 been here, Your Honor, and we have certainly been
7 ready to talk many times. But this issue on the claim
8 construction, it cuts both ways.

9 THE COURT: General counsel, they are
10 important people, I understand that, but they are not
11 the business executives who need to understand what
12 the business situation is and what they face from a
13 business standpoint.

14 So usually I require the business people to
15 be together on both sides, the business people.

16 Has that ever happened in this case?

17 MR. McDONALD: Oh, yes.

18 THE COURT: I know we have had the general
19 counsels of each one of these people.

20 MR. McDONALD: We've had executives from the
21 parties in mediations.

22 THE COURT: All right.

23 MR. McDONALD: By the way, Mr. McPheeters is
24 also senior vice president Lawson.

25 THE COURT: Most of the general counsels are,

LOHKAMP - CROSS

1127

1 but they're not business people.

2 MR. McDONALD: My point, though, on the
3 merits of the case, if you change your mind about the
4 definition of our catalogs, that's going to cut both
5 ways in terms of helping us tremendously on the
6 invalidity case in this case. It's going to actually
7 make it a lot simpler if you're going to broaden that
8 definition.

9 THE COURT: I'm not looking to help or hurt
10 either one of you. What I'm trying to do is make sure
11 I'm right about what I said and make sure the jury
12 understands it, and they get the evidence in, one way
13 or the other. It isn't my office to try to help one
14 of you or hurt the other one.

15 MR. McDONALD: I'm just saying the liability
16 issues shift our risk.

17 THE COURT: Away from infringement and help
18 you on the invalidity.

19 MR. McDONALD: We're willing to take that
20 risk, Your Honor.

21 THE COURT: I gather.

22 MR. ROBERTSON: One final point, Your Honor.
23 I would like to have on the record a Rule 403
24 objection because I think this whole line of
25 questioning is just misleading and confusing to the

LOHKAMP - CROSS

1128

1 jury and is inappropriate.

2 So what I understand from the Court's ruling,
3 that when the witness resumes the witness stand, the
4 line of questions directed to this published by the
5 vendor language would be inappropriate.

6 THE COURT: They are not going to pursue that
7 until their case. They can bring that witness back.
8 And by that time I will have sorted through what it
9 is.

10 Ordinarily, I wouldn't approach it this way,
11 but I think if this is all in, then it may be hard for
12 the jury to dislodge it. Whereas, if it comes in
13 later, they'll have it all in one place anyway.

14 I would like -- you-all have the testimony
15 already, don't you all, have the text?

16 MR. McDONALD: The daily transcripts?

17 THE COURT: Yes.

18 MR. McDONALD: Yes, Your Honor, we're getting
19 daily transcripts.

20 THE COURT: You might look and see the extent
21 to which Dr. Weaver talked about this issue on his
22 examination.

23 MR. ROBERTSON: I recall very clearly I asked
24 him: Does the Court's claim construction have
25 anything about who selects the data? No.

LOHKAMP - CROSS

1129

1 Does it matter no selects the data?

2 THE COURT: I understand that he testified
3 quite clearly and accurately what was in there and
4 what wasn't, but that's not what I'm talking about.
5 I'm talking about did he testify how things got into
6 the item master on direct examination and how the item
7 master was established on his direct examination, and
8 how it worked with the vendor table on his direction
9 examination?

10 All right. We'll take an hour for their
11 lunch, too. So tell the jury.

12 (Luncheon recess taken.)

13

14

15

16

17

18

19

20

21

22

23

24

25